



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 22, 1994

Ms. Barbara M. Elliott  
Assistant City Attorney  
City of Galveston  
P.O. Box 779  
Galveston, Texas 77553-0779

OR94-473

Dear Ms. Elliott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26503.

The City of Galveston (the "city") has received a request for twenty-four items generally relating to the city's relationship with McRay Enterprises. The requestor seeks information encompassing an eight- to ten-year period. As a threshold matter, you state that the city may have destroyed some of the requested information in compliance with guidelines the city and the Texas State Library and Archives Commission have established.

The Local Government Records Act, Local Gov't Code title 6, subtitle C, requires the records management officer<sup>1</sup> of a local government to prepare a records control schedule, a document listing the records a local government maintains, the retention period for each type of record,<sup>2</sup> and certain other records disposition information. Local

<sup>1</sup>Section 203.025 of the Local Government Code requires the governing body of each local government to designate a records management officer.

<sup>2</sup>Section 203.042(a) of the Local Government Code specifies that the governing body of a local government must determine a retention period for each type of record listed on the records control schedule. The retention period may not be less than

(1) a retention period prescribed by a state or federal law, regulation, or rule of court; or

(2) a retention period for the record established on a records retention schedule issued by the commission.

*Id.* § 203.042(b).

Gov't Code § 203.002(3); *see also id.* § 201.003(12) (defining "records control schedule"). The director and librarian of the Texas State Library and Archives Commission must approve the records control schedule.<sup>3</sup> *Id.* §§ 203.041(a), .043. Once approved, the records control schedule dictates when the local government may destroy the records listed on it without further notifying the director and librarian of the Texas State Library and Archives Commission. *Id.* § 203.043; *see also id.* § 202.001 (providing for destruction of records).

You advise that the city will provide the requestor with any information responsive to the request that is not exempt from disclosure and that the city has not yet destroyed. Of course, a governmental body may not destroy public records that are subject to an open records request. Open Records Decision No. 530 (1989) at 5 (and sources cited therein). On the other hand, the Open Records Act does not require a governmental body to make available nonexistent information. Open Records Decision No. 362 (1983) at 2. Accordingly, we agree that the city need not release or reconstruct information that it destroyed pursuant to a valid records control schedule and that was not the subject of this open records request when destroyed.

You specifically object to releasing only five of the requested items:

1. A copy of all street paving contracts from 1987 - 1994 with McRay Enterprises, Inc. or any other business owned or operated by C.W. McRay, his family members or any stockholders.

....

10. ... a written report on all actual verbal agreements between the City Manager ... and McRay Enterprises, Inc. ....

....

12. A copy of the names, job titles, addresses and phone numbers of all current and past City of Galveston employee[s], Mayors and Councilmembers for whom [sic] has ever had any knowledge whatsoever of the written contracts or verbal agreements between McRay Enterprises, Inc[.], C.W. McRay, individually, any of his family members or stockholders of McRay Enterprises, Inc. ....

....

---

<sup>3</sup>Section 203.041(a) of the Local Government Code does not require a records management officer to prepare and file with the director and librarian of the Texas State Library and Archives Commission a records control schedule until January 2, 1995. The records management officer may do so before that date, however.

21. . . . [a list] of each and every verbal agreement that [the City Manager] added to each contract year from 1987 - 1994.

....

23. A copy of the City of Galveston Contractor Records such as, but not limited to, W-2 on each one of McRay Enterprises, Inc. employee's a supervisor (McRay), four operators, two laborers that have been paid for by the taxpayer dollars even if they work or not. . . .

We will consider each of the requested items separately.

You object to the first request only in part. Apparently, the city has released or will release to the requestor a copy of all street paving contracts from 1987 to 1994 with McRay Enterprises, Inc. You believe that the city need not respond to the remainder of the request, which seeks copies of street paving contracts from 1987 to 1994 with "any other business owned or operated by C.W. McRay, his family members or any stockholders." You state, "The City is not required to conduct research to determine what businesses, if any, in which Mr. McRay's family members or the stockholders of McRay Enterprises, Inc. may be involved." You further advise that the city is willing to provide the requestor with public information regarding contracts with any of these persons if the requestor will furnish the names of specific entities or individuals.

We agree that the Open Records Act does not require a governmental body to perform research. Cf. Open Records Decision No. 563 (1990) at 8. However, a governmental body must make a good-faith effort to relate a request to information in its possession. Open Records Decision No. 561 (1990) at 8. If you are aware of other street paving contracts between the city and a member of the McRay family or a stockholder in McRay Enterprises, Inc., the city should release the information. If not, however, the city should so advise the requestor and repeat its offer to provide him or her with any public information regarding the contracts if he or she will provide the names of the entities or individuals in which the requestor is interested.

You state that the information listed in items 10 and 21, a written report of verbal agreements and a list of verbal agreements, does not exist. As we have stated above, the Open Records Act does not require a governmental body to release nonexistent information. See Open Records Decision No. 362 (1983) at 2. Furthermore, the Open Records Act does not require a governmental body to prepare new information, Open Records Decision No. 605 (1992) at 2, or to prepare information in the form the requestor seeks, Open Records Decision No. 467 (1987) at 2. However, the governmental body must make a good-faith effort to relate the request to information in its possession. Open Records Decision No. 561 (1990) at 8. If the city has made a good-faith effort to relate items 10 and 21 to information in its possession and found nothing, we agree that the city need not compile or prepare any new information for the requestor.

In regard to item 12, which requests information about all current and past city employees and officers who have had any knowledge of the written or verbal contracts with McRay Enterprises, Inc., C.W. McRay, any of C.W. McRay's family members, or any stockholders of McRay Enterprises, Inc., you state that the city does not maintain a list of such employees and officers, nor does the Open Records Act require the city to research the identifications of all such employees and officers. We agree. We further note that the city may not provide the addresses and home telephone numbers of any past or present employees or officers who have requested, in accordance with section 552.024 of the Government Code, the city to withhold the information from the public. *See also* Gov't Code § 552.117.

Finally, you believe that the W-2 forms requested in item 23 are confidential under federal law. This office has determined that W-2 forms an individual has submitted to a governmental body are excepted from public disclosure as information deemed confidential by judicial decisions protecting privacy. Open Records Decision No. 523 (1989) at 5. Accordingly, the city may not release the requested W-2 forms.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymberly K. Oltrogge  
Assistant Attorney General  
Open Government Section

KKO/MAR/rho

Ref.: ID# 26503

cc: Blu Shields  
P.O. Box 2550  
Galveston, Texas 77553-2550